

Consultation Questionnaire

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 2 : Values and Principles

Question 1a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 1b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 1c: Do you have any further comments on this section of the guidance?

Some advice to help you to answer this question – Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Comments

It is vital that the particular needs of children and families are significantly reflected throughout the draft regulations. We welcome specific guidance on children and families but would prefer that these issues were central to the main guidance document rather than an add-on in 'further guidance'. Explicit detail is required to set out how a child-centred and children's rights approach can be delivered by professionals tasked with facilitating a child, parent or carer's transition to self-directed support.

It is not clear from the guidance how the SDS model aligns with proposals in the Children and Young People Bill. As guidance refers to the Children and Young People Bill, it is likely to need updated when the Bill is enacted in 2014 to explain the named person provision, the single child's plan and the array of changes to the planning and delivery of children services that will arise from the raft of applicable legislation currently being progressed in Scotland.

The format of the guidance is easy to read however the document would benefit from increased use of 'steps' and 'tables' setting out roles and responsibilities etc. Picture representations of pathways would also be useful as it is not always a linear process.

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Consultation Questions

Section 3: Values and Principles

**Question 2a: Was this section of the guidance clear and easy to understand?
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 2b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 2c: Do you have any further comments on this section of the guidance?

Some advice to help you to answer this question – Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Comments

Section 2 (b) of the SDS Act specifies that “professionals must take reasonable steps to support a person’s right to participation....” Section 11 and 12 of the guidance also talks about the importance of participation and involvement however it is not clear how this extends to include children and young people’s right to participate in shaping their support package. We would stress the importance of upholding duties to ensure that children are consulted and co-operated with in the design and delivery of services provided through community planning (as is required through the Local Government in (Scotland) Act 2003).

Section 1 of the SDS Act specifies that “the supported person must be provided with any assistance that is reasonably required.....to make an informed choice about their options for support”. Again, it is not clear from the guidance what training and support is available to social workers to ensure that they have the capacity and prerequisite knowledge and skills to provide the considerable support that service users undertaking self-directed support options will require. It is paramount that clear pathways to the necessary support and training are resourced and set out for professionals if this system is to work.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 4: Eligibility and Assessment

Question 3a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 3b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 3c: Do you have any further comments on this section of the guidance?

Some advice to help you to answer this question – Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Comments

The eligibility criteria, as set out in the guidance, prioritise risks into 4 bands. Whilst this is clear and easy to understand, it is entirely adult centred. In their response to the SDS Bill consultation, Cosla said: “*regulation and guidance will need to consider how to balance a presumption to entitlement and avoidance of blankets exemptions, with the protection of local authorities’ discretion and professional judgments, across a range of groups and circumstances.*”

The guidance, as currently drafted, does not sufficiently address these issues.

The importance of assessment

As in question 2 – it is vital that sufficient training is provided for professionals to ensure their ability to work in collaboration with children, young people and their families to support service users to express their views about assessment and to make an ‘informed choice’ about their care requirements, as set out in the ‘exchange model’ of assessment outlined within the Act.

Sections 33 – 40 refer to assessment practice and personal outcomes yet there is no mention of how the *personal* outcomes align with wellbeing as set out in the Children and Young People Bill proposals or the SHANARRI indicators. More detail for professionals on how SDS outcomes will be measured against broader wellbeing measurement across children’s policy in Scotland is required.

Case studies to illustrate where this assessment fits with the wider assessment framework as set out in children’s policy would be useful here.

Timescales that set out the anticipated duration of assessments would be useful here so that professionals and service users can develop care packages accordingly

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Consultation Questions

Section 5 : Support Planning

This section of the guidance covered:

- general guidance on support planning
- risk
- resources
- the choices that must be made available to the supported person and
- information and support

Question 4a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 4b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 4c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Comments

5.3 Resources – part 49 states that “there is no single approach to ‘resource allocation’ prescribed in law, nor any single method recommended by Scottish Government.” As there is no standard resource allocation process across the country, it is likely that professionals will use their understanding of this guidance to guide their local process. Professionals may require additional good practice in this area. There appears to be scope for local authorities to interpret the law and guidelines in different ways which may lead to the delivery of different regimes across the country and potentially a postcode lottery of care.

The 4 options are well explained in this section as are the circumstances in which choices might not be available. This ‘discretion’ to refuse a particular option may affect children in homeless/transient households or those living with parental substance misuse. We would hope that this is not interpreted as refusing SDS entirely to certain groups.

In 5.5, on information and support we would make the following comments:

67 - Section 9 of the SDS Act 2013 requires the professional “to ensure that information and appropriate ‘signposting’ advice is provided to individuals to make an informed choice”. This section should be strengthened so that service users are directed to services and support to ensure any information is meaningful and understood. Again, it is not clear from the guidance how children and young people will access informed choice – providing information will not guarantee that a child or young person will utilise/ benefit from that information.

76 – Advocacy services ‘where they consider this appropriate’ – advocacy services are crucial in realising provisions around participation and individuals making and informed choice. There is a need for clarity around what is considered appropriate as local authorities trying to balance a plethora of competing priorities may decide not to make advocacy services available.

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Consultation Questions

Section 6 : Monitoring and Review

Question 5a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 5b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 5c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Comments

The guidance provides insufficient information on monitoring and review. This section needs to flow directly from the assessment and support planning sections.

Paragraph 79 specifies that local authorities should conduct reviews on an annual basis – for children and young people it would make sense to align this with other monitoring arrangements that may be in place for them in education, social work etc.

This section should also link to transitions between child and adult services and planning and monitoring arrangements for this. For example in the transition period more regular monitoring might be required.

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Consultation Questions

Section 7 : Facilitating genuine choice for individuals

Question 6a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 6b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 6c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Comments There are considerable resource implications in developing a workforce with the knowledge and expertise to establish, interpret and facilitate the specific care requirements of service users in any one area. It is not clear from the guidance how these additional demands on social workers, many of whom are already overstretched, will be managed and absorbed. More detail is required.

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Consultation Questions

Section 8 : The role of the NHS professional

Question 7a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 7b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 7c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make? that are more appropriate for statutory guidance rather than Regulations?

Comments

This section on the role of the health professional is welcomed as numerous inquiries into child protection have reminded us of the fundamental importance of working across boundaries between adult, child, health and social care services. However it is likely that this section will require further updating to incorporate the changes proposed in the Public Bodies (Joint Working)(Scotland) Bill which is likely to transform how child and adult services interface.

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Consultation Questions

Section 9.1 : Children and Families

Question 8a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 8b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 8c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Comments

Children and families should be at the centre of the guidance and implementation plans must explicitly outline how a child-rights approach (as set out in GIRFEC and the Children and Young People Bill proposals) can be delivered by local authorities. Specific guidance on children is welcomed but children's distinct needs and vulnerabilities should be woven throughout the guidance document rather than in the 'further guidance' where it appears supplementary to the adult guidance.

This section will need updated when the Children and Young People Bill is enacted in 2014.

The section on transitions is welcomed but could be referred to throughout the guidance as there are various transitions points throughout a child's journey. For example, the specific implications of SDS for transition planning for looked-after children should be specifically addressed.

We welcome the references in paragraphs 99/100 to the child's involvement in making and managing choices – again this should be expanded with links and examples to good practice.

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Consultation Questions

Section 9.2 : Supported decision-making and circles of support

Question 9a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 9b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 9c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Comments The guidance does not provide sufficient detail to local authorities on how to decide whether a person is 'ineligible' to receive direct payments or sufficient guidance on capacity to manage direct payment. The guidance must explicitly consider the position of children, including vulnerable children and those about whom there are child protection concerns. This must include definitions and case studies of the circumstances within section 22 where an individual would be both eligible and ineligible. Greater reference to the distinct needs, rights and vulnerabilities of children and young people is required throughout.

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Consultation Questions

Section 9.3: Carers

**Question 10a: Was this section of the guidance clear and easy to understand?
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 10b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 10c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Comments

We support the view of Scotland's Commissioner for Children and Young People that young carers should be mentioned as a group that would benefit from enhanced guidance "given their special position of being both children (some of them may be looked after themselves) and carers." References to and a case study of young carers would also be welcomed in this section.

The guidance should specify that all those working directly with children or with adults with children under 16 in the home must be subject to PVG in order to take up a care/support role. This should include all those employed as personal assistants.

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Consultation Questions

Section 9.4: Direct payments

Question 11a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 11b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 11c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Comments This section could make links to other parts of the guidance - eg on monitoring. Those who choose direct payments may require support and information to do so. There may be scope for local authorities to interpret the law and guidance in different ways which could lead to the delivery of different systems across localities and potentially a post code lottery of care.

More detail is required in this section to explain how direct payments can be used. Also more guidance is needed on using direct payments to pay for child specific services such as educational support.

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Section 9.5: Wider legal duties and strategic responsibilities

Question 12a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 12b: How useful did you find this section of the guidance? (please

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 12c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Comments

Draft Statutory Guidance on Care and Support

Consultation Questions – General Questions

The Guidance document as a whole

Question 13: Do you have any further general comments on the guidance?

For example, are there any gaps in terms of the topics covered by the guidance? Are there any major changes that you would recommend? Do you have any comments on the style and layout of the guidance, or the language used in the guidance?

Comments Overall, as we have suggested children, young people and their families should be woven throughout the guidance rather than referred to largely in a separate section.

The guidance offers no consideration of the broader legislative context which means that it will require considerable updating when the Scottish Government's broader legislative agenda is enacted over the coming months and years.

It is vital that professionals are supported to manage the considerable increases to workload – that will arise from the introduction of SDS and the many other new responsibilities set out in the Children and Young People Bill and the Public Bodies (Joint Working) Bill - in a context of depleting resources. It is not clear from the guidance how professionals will be supported to manage these increasing and potentially competing priorities.

The costs and benefits arising from this guidance

Question 14: Do you have any comments on the financial costs or benefits of the requirements set out in the guidance?

Can you identify any financial costs or benefits to individuals, local authorities, health boards, providers or any other person or organisation affected by the guidance. In considering the costs and benefits you may wish to consult the Business Regulatory Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act available at the following hyperlink:

<http://www.scotland.gov.uk/Publications/2012/03/5525>

We plan to update the BRIA in light of the comments and information from this consultation.

Comments

The equality and human rights impacts of the guidance

Question 15 (a): Do you have any views on the impact of the guidance on any or all of the following equality categories:

- i) age;
- ii) disability
- iii) gender;
- iv) lesbian, gay, bisexual and transgender;
- v) race, and;
- vi) religion and belief

Some advice to help you to answer this question - By “equality impacts” we mean whether or not the guidance will affect certain groups in a positive or a negative way. In considering the impacts you may wish to consult the Equality Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act available at the following hyperlink:

<http://www.scotland.gov.uk/Publications/2012/03/9876>

We plan to update the Equality Impact Assessment in light of the comments and information from this consultation.

Comments

Question 15 (b): Do you have any views on the impact of the guidance on human rights?

For more information about human rights please see the Scottish Human Rights Commission’s website at:

<http://www.scottishhumanrights.com/abouthumanrights/whatarehumanrights>

Comments Any reference to human rights should include the United Nations Convention on the Rights of the Child.

Consultation Questionnaire

Draft Regulations

Consultation Questions

Question 1: What are your views on Part 2 of the draft Regulations (calculation, payment and termination of direct payments)?

Comments It would be useful for these (and all other regulations) to be translated into an easy read/simplified version for day to day use. It is important that users understand how their support is calculated and why it could be terminated.

Question 2: What are your views on Part 3 of the draft Regulations (appropriate/inappropriate circumstances for the employment of close relatives)?

Comments

Question 3: What are your views on Regulation 11 which deems individuals who are placed under a variety of criminal justice orders to be ineligible to receive direct payments?

For example, is it appropriate to impose the exclusions listed in Regulation 11? Are there any persons not listed in regulation 11 to whom it would be inappropriate to offer the option of a direct payment?

Comments

Question 4: What are your views on restricting access to direct payments for those who are homeless, those who are fleeing domestic abuse or those who require support in relation to drug or alcohol addiction?

Comments

Question 5: What are your views on restricting access to direct payments in relation to the provision of long-term residential care?

This question was raised during the initial consultations on a draft SDS Bill. The Scottish Government would like to invite detailed views before making a final decision prior to the laying of the Regulations before the Scottish Parliament. Should the restriction be removed from the final regulations, thereby allowing direct payments for residential care? Or should it be retained? Please provide reasons as to your support or opposition to requiring authorities to provide direct payments for residential care.

Comments

Question 6: The draft Regulations do not specify circumstances where the direct payment option should be unavailable for care and support to children/families. *Should* there be specific restrictions on choice of support in relation to children/families support (i.e. support provided under Section 22 of the Children (Scotland) Act 1995) and should these restrictions apply to the direct payment only, or to other options as well?

Comments

Question 7: Do you have any further comments on the draft Regulations?

For example, are there any gaps in terms of the topics covered by the Regulations? Are there any major changes that you would recommend? Are there any topics that are more appropriate for statutory guidance rather than Regulations?

Comments

Draft Regulations

Consultation Questions – General Questions

The costs and benefits arising from these regulations

Question 8 : Do you have any comments on the financial costs or benefits of the Regulations?

Can you identify any financial costs or benefits to individuals, local authorities, health boards, providers or any other person or organisation affected by the Regulations. In considering the costs and benefits you may wish to consult the Business Regulatory Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act available at the following hyperlink:

<http://www.scotland.gov.uk/Publications/2012/03/5525>

We plan to update the BRIA in light of the comments and information from this consultation.

Comments

The equality and human rights impacts of the regulations

Question 9 (a): Do you have any views on the impact of the Regulations on any or all of the following equality categories:

- i) age;
- ii) disability
- iii) gender;
- iv) lesbian, gay, bisexual and transgender;
- v) race, and;
- vi) religion and belief

By “equality impacts” we mean whether or not, and in what ways, the Regulations will affect certain groups, and whether they will impact on those groups in a positive or a negative way. In considering the impacts you may wish to consult the Equality Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act 2013, available at the following hyperlink:

<http://www.scotland.gov.uk/Publications/2012/03/9876>

We plan to update the Equality Impact Assessment in light of this consultation.

Comments

Question 9 (b): Do you have any views on the impact of the Regulations on human rights?

For more information about human rights please see the Scottish Human Rights Commission’s website at:

<http://www.scottishhumanrights.com/abouthumanrights/whatarehumanrights>

Comments